The gentleman from Maryland has no objection to this legislation and certainly wants to see it enacted; but the gentleman would like to know and I think the House has the right to know what is the plan for this evening. If we are going to be here until 2 a.m. again, it would be nice to know that now.

The SPEAKER pro tempore. The Chair would advise the gentleman from Maryland that after this request, there will be two additional conference reports which have been scheduled previously. Subsequent to that, we will have unanimous-consent requests only.

Mr. BAUMAN. So the possibility is that we may be here until 8 o'clock or 9 o'clock and that the message all day long has not been accurate, as usual.

The SPEAKER pro tempore. There are additional conference reports, I would say to the gentleman, that will come up.

Mr. BAUMAN. I would just say to the Chair and to the House for their own information, if we are going to stay here after the time we were repeatedly told we would leave, we are going to do some work.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Texas?

Mr. JACOBS. Mr. Speaker, further reserving the right to object, as the first sponsor of the legislation involving both elements that we are considering here now, I wish to commend the gentleman from New York (Mr. CONABLE) for the yeoman work the gentleman has done on this legislation, and also the gentleman from Texas (Mr. PICKLE).

If it is in order, I apologize to the House for the additional time that has been taken beyond 6:30, but I do not apologize to the people of the United States who will not see felons collecting social security benefits and I do not apologize to the insurance agents who will get their social security benefits.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from Texas.

Mr. PICKLE. Mr. Speaker, I want to commend the gentleman from Indiana, because he was the original author of this legislation in this area.

Mr. Speaker, I have no further requests for time.

Mr. JACOBS. Mr. Speaker, I withdraw my reservation of objections.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Texas (Mr. PICKLE)?

There was no objection.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 1790, PRIVACY PROTECTION ACT OF 1980

Mr. KASTENMEIER. Mr. Speaker, I call up the conference report on the Senate bill (S. 1790) to limit governmental search and seizure of documentary materials possessed by persons, to provide a remedy for persons aggrieved by violations of the provisions of this Act, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Under the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of September 26, 1980.)

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. RAILSBACK) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

□ 1850

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring this conference report to the House. This report is a fair and successful compromise between the two Houses on a worthy and carefully crafted piece of legislation. I am pleased to inform Members that the Senate unanimously agreed to this report on Monday.

CONFERENCE REPORT SUMMARY

The report provides that State, local, and Federal law enforcement officials may not use a search warrant to obtain documentary materials in the possession of those engaged in first amendment activities unless one of five broad exceptions apply.

The exceptions are:

If there is probable cause to believe that the person in possession of the materials has committed the offense to which the materials relate;

If there is reason to believe that immediate seizure of the materials is necessary to prevent death or serious bodily injury;

If there is reason to believe that obtaining a subpena would result in the destruction or concealment of the materials;

If the subpena has been obtained and has failed to produce the material; or

If the materials consist of contraband or the fruits or instrumentalities of a crime.

The conference report would protect those who have a purpose to disseminate to the public a book, newspaper, broadcast or other form of public communication.

The report also provides that searches of the actual work product of those covered may be conducted only if there is probable cause to believe that:

The person in possession of the materials has committed the offense to which the materials relate; or

Immediate seizure of the materials is necessary to prevent death or serious bodily injury.

The conference report also provides that the Attorney General shall develop guidelines which limit the use of search warrants against nonsuspect third parties other than those engaged in first amendment activities.

ISSUES RESOLVED IN CONFERENCE

Mr. Speaker, there were several issues of disagreement between the two Houses which we were able to work out in this conference report.

These issues include:

First, a definition of the term "work product" was refined to make it clear that it means only materials which were created for the purpose of public communication. This clarification is taken from the Senate bill and is intended to include any material created for the purpose of communication, even though it may never actually be communicated or may be edited out of the final communicated materials.

Second, the definition of the term "documentary materials" differed in the two versions and the conference report contains the House version which reflects the clarifying amendment of Mr. KINDNESS. The House version was simply a clearer and more precise definition.

Third, and most importantly, the conference report provides an explicit civil remedies section which gives a person aggrieved by violations of this act a civil cause of action in Federal court. This provision is taken largely from the Senate bill with the important exception that punitive damage awards are not provided for in the conference report. While this remedies section is taken from the Senate bill it is not unfamiliar to the House. This language was in the original bill as introduced in the House, it was in the Executive communication sent up by the President and it was considered in hearings by the Judiciary Committee.

I know that there are House Members who are opposed to a strong remedies section in this bill and who had hoped that amendments to the Federal Torts Claims Act would be enacted this year, thus obviating the need for this remedies section. Since we have not been able to enact amendments to the Torts Claims Act, I believe that it is essential that we provide a real protection for persons who are aggrieved by violations of this act. I would point out that the conference report has an explicit waiver of the exclusionary rule and does not permit the award of punitive damages.

Finally, with regard to the Attorney General guidelines for Federal searches of other nonsuspect third parties, the House included a fuller statement of the type of confidential relationships which must be recognized and a requirement that a U.S. attorney approve an application for a warrant in most cases. The conference report contains the House provisions verbatim.

I urge my colleagues to join me in passing this conference report today and sending this measure to the President for his signature.

Four standards are established which must be incorporated in the development of the guidelines. Paragraph 1 of section 201(a) mandates a recognition of the personal privacy interests of the person possessing the materials sought. Paragraph 2 requires that the least intrusive means of obtaining the materials be employed which do not substantially jeopardize the availability or usefulness of the materials sought. The committee expects these two standards to be translated into guidelines which will require an informal request or a subpena wherever there is an opportunity for an effective alternative to search and seizure. The committee

also anticipates that the exceptions to this general rule in the guidelines will parallel those provided in the legislation. In other words, the principal exception which would allow the use of a search warrant as opposed to a request or a subpena is where there is sufficient reason to believe that the documentary materials sought would be destroyed if a subpena were to be issued.

Destruction of evidenary materials would be most likely to occur in those cases where a close, sympathetic between the possessor of the materials and the suspect exists, or where the suspect holds some form of dominance over the possessor. The type of close relationship is most found in marital or family settings, and therefore, establishes the basis for the exclusion of those "related by blood or marriage to such a suspect" from the protections of the guidelines. However, it is not in the intent of the legislation to exclude from its protection family members who do not have this kind of demonstrable close relationship with the suspect. Further, by using the words, "related by blood or marriage" it is the intent of Congress that only immediate blood relations, that is, father, brother, sister, son and daughter apply and that only ongoing relationships of marriage be considered to meet this exception. That is, separated or divorced spouses could not be reached by this exception.

The third standard to be incorporated in guidelines as provided in paragraph 3 is a recognition of special concern for the privacy interests represented in a known, professional, confidential relationship, such as doctor-patient, attorney-client, or clergyman-parishioner. Testimony on Stanford Daily legislation before the committee convinced the members of the extreme sensitivity of the relationship, for example, between a psychiatrist and his or her patient, and the harm which can be done by an intrusive governmental seizure of confidential information, and police rummaging through confidential files. The reference to these three relationships in the statute is not intended to be an exclusive reference. Other important confidential relationships such as exist between psychologist and client, psychiatric social worker and client, and psychiatric nurse and client shall be recognized. Further, it is the intent of Congress that the phase "doctor-patient' be construed broadly to include all doctor-like therapeutic relationships.

The fourth standard to be incorporated in the guidelines is a specific requirement that any application for a warrant to conduct a search governed by this title be approved by an Attorney for the Government. Only is rare and genuine emergencies could another appropriate supervisory official approve such an application and then only if within 24 hours of such emergency the appropriate U.S. attorney is notified. It is the intent of Congress that an accurate and up-to-date record of any such emergencies be maintained.

The searches of those in privileged relationships which have been brought to the committee's attention have all been executed at the State or local level. The committee has been struck by the lack of definitive Federal data available in this sensitive area, however, therefore in subsection (b) of section 201 has required the Attorney General to collect and compile information on the use of search warrants by Federal officers or employees for documentary materials in the possession of those in professionally confidential relationships. These data are to be reported annually to the Judiciary Committees of the House and Senate acting in their oversight capacity over the Department.

Section 202 provides that guidelines issued by the Attorney General shall have the full force and effect of Department of Justice regulations and that appropriate disciplinary action shall be fully initiated against any errant officer or employee. It is the view of Congress that the Office of Professional Responsibility of the DOJ shall be called upon to investigate and act upon any alleged violation of the guidelines developed pursuant to this act.

This section also provides that noncompliance with guidelines would not be litigable, and the evidence obtained through a violation of guidelines would not be subject to the exclusionary rule, and that the Federal courts would be without jurisdiction over any claim based solely on a failure to follow such guidelines.

Nonlitigability provisions similar to subsection 201(c) are found in section 205 of S. 1722, the proposed revision of the Federal criminal code, which sets forth factors to be considered in the exercise of concurrent Federal jurisdiction, and in section 537a of S. 1612, the proposed FBI charter legislation.

Absent explicit language, it is arguable that judicial review of the adequacy of guidelines would be available under section 704 of the Administrative Procedures Act, 5 U.S.C. 704. However, the well established "presumption of reviewability" of *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967) is subject to an exception under section 791(a) of the APA, that is, where the "statute precludes judicial review." Of course, the longstanding rule will continue to apply that "an executive agency must be rigorously held to the standards by which it professes to be judged." *Vitarelli* v. *Seaton*, 359 U.S. 535 (1959) (Frankfurter, Jr., concurring). Under this rule, courts are obliged to bind administrative agencies to their internal regulations and guidelines.

Whether the exclusionary rule could be invoked absent the language of this section is debatable. The Supreme Court in *United States* v. *Caceres*, 440 U.S. 741 (1978) did not resolve the issue of whether the violation of regulations gives rise to the application of the exclusionary rule. Dicta in Caceres might be interpreted to allow exclusion of evidence if the violation of guidelines rises to the level of a statutory violation, but whether a defendant would have the requisite standing to invoke the rule for such a violation in the search of a third party without an explicit congressional authorization remains highly doubtful. In any case, the explicit language of subsection (c) forecloses such a possibility.

It was the position of the Department of Justice, in which the committee concurred, that guidelines should not create the opportunity for litigation which would be both burdensome and unnecessary to achieve the purposes of the guidelines. Title II of S. 1790 will assure that the present practices of restraint by Federal officers in the area of third party searches become an articulated departmental policy, binding on all Federal law enforcement officers. The committee expects that under the guidelines any officer who violates the guidelines will be subject to disciplinary action by the Department, and that the Department will enforce the guidelines fully in good faith compliance with the policy toward third party searches that they express subject only to the kind of judicial review contemplated in Vitarelli against Seaton.

Mr. RAILSBACK. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I yield to my colleague from Illinois (Mr. RAILSBACK) who has worked diligently to perfect this piece of legislation.

Mr. RAILSBACK. I thank my chairman for yielding.

Am I correct, speaking about the agreement entered into between the House and the other body, where we backed off the third part of our bill that dealt with innocent third parties, that one of the reasons we did that, as the gentleman mentioned, was the Federal Government agreed to establish guidelines and we had some input into those guidelines. But I want to ask the gentleman: Is it not his hope that these States, even though we are not mandating them to do anything, that the States hopefully will exercise, with a great deal of restraint and caution as far as going in without a subpena and perhaps rummaging a lawyer's office looking for files, or rummaging a psychiatrist's office, recognizing that there have been some cases in those areas? I think it is our hope that they will show restraint.

Mr. KASTENMEIER. The gentleman from Illinois is exactly correct. While we do not mandate it in this bill, we stop short of that, but certainly, nonetheless, we do hope that the bill contains a model for States to emulate in terms of protecting innocent third parties and those with special privileged situations with respect to materials in their possession.

Mr. RAILSBACK. I thank my chairman.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I am pleased to yield to the gentleman from California (Mr. DANIELSON).

(Mr. DANIELSON asked and was given permission to revise and extend his remarks.)

Mr. DANIELSON. Mr. Speaker, I would like to point out an innocent error in the chairman's comments. The conference report was not unanimously agreed to. I did not agree to it, I did not sign it. I think the record should reflect that fact. I am pleased to hear the Chairman make the record clear, that we have intentionally eliminated the punitive damage provisions from the enforcement provisions of this bill. The bill does not, explicitly nor impliedly, permit punitive damages.

As to the conference report itself—I

have not signed and do not approve it. I am very disappointed in the way this so-called conference was held. The truth and the fact is that there was no conference. The conferees never met. Conferees were appointed but no meeting was ever called, no meeting was ever held, and the purported conference report and statement of managers is nothing but the product of staff members. It does not reflect the work of the conferees, and the opinions and representations as to the meaning of the provisions of the bill do not reflect the work of the conferees; they should be of no influence or effect upon the future holdings of a court which may look into the legislative history of this bill.

On Monday, September 22, 1980, I spoke at length concerning this bill. My opinions have not changed and they remain as reflected by the CONGRESSIONAL RECORD of that date.

Mr. KASTENMEIER. Even in the gentleman from California's dissent he nonetheless played a noble role in this matter and we appreciate his efforts and his independence and his integrity.

Mr. Speaker, I have no further requests for time.

Mr. RAILSBACK. Mr. Speaker, I am happy to yield such time as he may consume to the distinguished gentleman from New York (Mr. KEMP) who, I might add, has for a long time been a strong supporter of this kind of legislation. I want to commend him for all the work that he has done in pushing this particular legislation.

(Mr. KEMP asked and was given permission to revise and extend his remarks.)

Mr. KEMP. Mr. Speaker, I am in strong support of the legislation before us today, which seeks to protect one of the essential freedoms of this country—freedom of the press. I congratulate the efforts of my friend from Illinois for his leadership.

This basic right has been in jeopardy for more than 2 years now, ever since the controversial Zurcher against Stanford Daily case was handed down. Under Zurcher, law enforcement authorities can enter and search the premises of a newspaper armed with a simple warrant issued upon probable cause that the newspaper may have in its possession evidence of a crime.

The police do not have to show that officers and employees of the newspaper are involved in the alleged unlawful activity.

They do not have to tell the newspaper that a warrant is being sought or that a warrant has been issued to search the premises.

They do not have to knock before entering the premises and can proceed to conduct their search without further ado.

In some States, they can search at night when the newspaper offices are empty, which means they can conceal entirely their visit and their seizure of papers and documents which are the lifeblood of the news gathering and publishing process.

No wonder the Boston Globe called the Supreme Court decision, a first step toward a police state.

Throughout our history, the press has played a vital role in maintaining the integrity of our democratic institutions. From Watergate to Billygate, the press has exposed corruption, disclosed improprieties by high-ranking officials, and revealed the undue influence of special interests on the processes of Government. Because confidential sources and deadlines play such a critical role in a news operation, the Zurcher decision jeopardizes the press' ability to carry out this noble role. Clearly, legislation to protect our basic first amendment rights is long overdue.

The bill before us today, S. 1790, is a logical and workable compromise. It would not prevent the police from conducting necessary searches, but simply require them to obtain a subpena (which involves a court hearing where the newspapers can state their case) instead of a search warrant (where the newspapers have no say). And S. 1790 would direct the Judiciary to set separate guidelines for searches involving third parties, another area of great controversy in the post-Watergate era.

Mr. Speaker, I cannot emphasize too strongly the importance of enacting legislation to protect the gathering and dissemination of the news. I cosponsored a similar bill back in 1978, and have waited ever since for Congress to take final action in this important area. Today we have a chance to help insure the freedom of the press with a positive vote. I urge my colleagues on both sides of the aisle to join me in voting "aye."

Mr. RAILSBACK. Mr. Speaker, I yield myself so much time as I may consume.

Mr. Speaker, I want to commend the chairman of the subcommittee and the other members of the Judiciary Committee who have worked very hard in trying to get this legislation passed by the House and enacted into law.

In addition, I want to commend and thank the gentleman from Indiana, Mr. DAN QUAYLE, who really has been, in my opinion, a motivating force in pushing for enactment on some kind of legislation like this, as well as, I might add, the gentleman from California (Mr. MCCLOSKEY). I commend them for all of their efforts.

Mr. Speaker, I rise in support of the conference report on S. 1790, the Privacy Protection Act of 1980. S. 1790 represents a compromise that is very close to the original House position embodied in H.R. 3486, which was recently passed by this body on May 30, 1980. The conference substitute would provide statutory protection to news organizations and individuals engaged in first amendment activity from surprise searches conducted by State, local, and Federal law enforcement officials. This section is consistent with the House-passed bill, H.R. 3486.

The House-passed bill included Attorney General guidelines governing searches in the "innocent third party" area that differed slightly from the guidelines contained in the Senate bill. The difference in the House bill included a fuller explanation of privacy interests and a requirement that a U.S. attorney approve an application for a warrant in most cases. The conference substitute adopts the House version.

The House version of the bill precluded any person seeking damages to proceed under the Federal Tort Claims Act. Under the Senate bill, persons engaged in first amendment activities who are subjected to an unlawful search would be able to collect actual and liquidated damages from the United States, or from any State government which has waived its sovereign immunity, or from any officer or agent of a State that has not waived its sovereign immunity. The Senate version of the remedies was adopted, except that the provision for punitive damages was deleted.

The compromise embodied in S. 1790, which was passed by the Senate on Monday, represents a careful balancing of the interest of law enforcement on the one hand, and the privacy rights of individuals on the other; moreover, it is without organizational opposition. I urge my colleagues to support the adoption of the conference report on S. 1790.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. RAILSBACK. I am happy to yield to my colleague from Indiana.

Mr. MYERS of Indiana. I thank my colleague for yielding. I am going to support this compromise and this report. But it does trouble me somewhat. There was a report this past weekend by a local newspaper in an article about a heroin addict, an 8-year-old, and the authorities, in the interests of saving the life of this 8-year-old, asked the newspaper for information. The newspaper refused to cooperate.

I hope something can be worked out so the media realize they are also citizens of this community and they have some responsibility if they know a crime is being perpetrated or being conducted, they have some responsibility.

I am going to support this because I think we need to protect the media but it does trouble me when we have things like this happen.

Mr. RAILSBACK. I do thank the gentleman for his support.

I might just add that the reporter in that particular case is running the risk, as my colleagues know, of going to jail. But I think this example points up the fact that we are dealing with very confidential, very sensitive matters in the first amendment area.

Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I thank the gentleman from Illinois (Mr. RAILSBACK) for yielding.

Mr. Speaker, I am rather disappointed with the results of the conference on the Privacy Protection Act of 1980. It is supportable legislation in general but in particular I think the conferees have chosen a very unwise choice with respect to the remedies allowed aggrieved parties under this legislation.

In essence, the Senate language has been substituted for the House version. When the full Judiciary Committee considered this measure we substituted an alternatives remedy section which provided that the Federal Tort Claims Act would be utilized as the exclusive statu-

tory mechanism for suits based upon first amendment violations recognized in this legislation.

□ 1900

The committee felt that the existing statutory vehicle for tort actions against the U.S. Government should be used in these cases as in all other cases. The Committee on the Judiciary unanimously agreed to this change, and this language was contained in the House version of the bill when it passed the House on September 22. However, the objectionable Senate language has now been reinserted under the compromise that has been referred to, and under its terms the Federal Tort Claims Act will not be utilized; rather, a separate, special cause of action is created against the United States for violations of this specific act.

This remedy section does not require utilization of the administrative claims procedure that is currently necessary for all other tort claims against the United States. The action also purports to waive the good-faith defense for States and local governments as well as for the United States. Clearly the Congress can waive this defense for actions brought against the United States, although I think that may be unwise.

But what authority do we have to waive defense for 50 States and all local units of government? We do not have that authority, and I guess we leave that for the moment in the courts.

There is one final point on which I hope we can get clarification. The original Senate bill would specifically authorize punitive damages for egregious violations of this statute. The Federal Tort Claims Act specifically prohibits a court from awarding punitive damages. While reference to punitive damages has been deleted from the Senate version, S. 1970, our concern is we do not have specific language that disallows punitive damages.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. RAILSBACK. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. SAWYER).

Mr. SAWYER. Mr. Speaker, I just want to comment that I am strongly in support of this act. I was a little unhappy to see the innocent third-party provision evolve into merely guidelines to be promulgated. One thing, however, that I think is a real bit of progression in this act is the dropping of the exclusionary rule. Those of you who are familiar with that know that illegally seized evidence or evidence obtained in some manner in violation of the law, in this case in violation of this search warrant prohibition or restriction, is not introducible in evidence and, of course, that operates to punish only one party, and that is the innocent public.

By turning loose criminals, it really does not visit any penalty on the real offenders, namely, the law enforcement people or the entity they represent. I think it is a much more satisfactory solution to allow the evidence to come in, allow the person who was guilty to be convicted, and be disposed of in a way dictated by the public interest, leading to a response in damages only by the entity that is represented by the violation. I think that is a much more realistic approach and is one that I hope in many other instances will be substituted for the old exclusionary rule. I think it is good legislation. Indeed, it does not, for example, prevent the inquiry into the identity of this 8-year-old who has been referred to. It is merely required to be done by subpena rather than search warrant.

Mr. RAILSBACK. Mr. Speaker, I have only one further request, and that is from the gentleman from Ohio (Mr. KINDNESS). I did not know he wanted to complete his thought, so I yield 2 minutes to the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. I thank the gentleman for yielding. I will not need 2 minutes to clarify the record on this, but I believe it would be desirable for the record to show, so as to remove any ambiguity, that although the language relating to punitive damages has been deleted and we do not have specific language that disallows punitive damages, I would hope the record could show that there is no implied authority for the courts to award punitive damages in suits based on the provisions of this bill.

I would ask the gentleman from Wisconsin if he would confirm that.

Mr. KASTENMEIER. If my friend, the gentleman from Ohio, will yield, I would in fact confirm that there is no express or implied authority to award any punitive damages under this bill.

Mr. KINDNESS. I thank the gentleman.

Mr. KASTENMEIER. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 357, nays 2, answered "present" 1, not voting 72, as follows:

[Roll No. 619]

YEAS—357

Addabbo	Bafalis	Boner	Byron	Hefner	Patten
Akaka	Bailey	Bonior	Campbell	Heftel	Patterson
Ambro	Baldus	Bonker	Carney	Hightower	Paul
Anderson, Calif.	Barnard	Bouquard	Carr	Hinson	Pease
Andrews, N.C.	Barnes	Bowen	Carter	Holland	Pepper
Andrews, N.Dak.	Bauman	Brademas	Cavanaugh	Hollenbeck	Petri
Annunzio	Beard, R.I.	Breaux	Chappell	Holt	Peyser
Anthony	Beard, Tenn.	Brinkley	Cheney	Hopkins	Pickle
Applegate	Bedell	Brodhead	Clausen	Howard	Porter
Archer	Bellenson	Brooks	Cleveland	Hubbard	Preyer
Ashbrook	Benjamin	Brown, Calif.	Clinger	Huckaby	Price
Ashley	Bennett	Broyhill	Coelho	Hughes	Pursell
Aspin	Bereuter	Buchanan	Coleman	Hutchinson	Quillen
Atkinson	Bethune	Burgener	Collins, Ill.	Hutto	Rahall
AuCoin	Bevill	Burlison	Collins, Tex.	Hyde	Railsback
Badham	Bingham	Burton, John	Conable	Ichord	Rangel
	Blanchard	Burton, Phillip	Conte	Ireland	Ratchford
	Bolling	Butler	Conyers	Jacobs	Regula
			Corcoran	Jeffords	Rhodes
			Corman	Jenkins	Richmond
			Cotter	Johnson, Calif.	Rinaldo
			Coughlin	Johnson, Colo.	Ritter
			Courter	Jones, N.C.	Robinson
			Crane, Daniel	Jones, Okla.	Rodino
			Crane, Philip	Jones, Tenn.	Roe
			D'Amours	Kastenmeier	Rostenkowski
			Daniel, Dan	Kazen	Rousselot
			Daniel, R. W.	Kelly	Roybal
			Dannemeyer	Kemp	Royer
			Davis, Mich.	Kildee	Rudd
			de la Garza	Kogovsek	Russo
			Deckard	Kostmayer	Sabo
			Dellums	Kramer	Santini
			Derrick	Lagomarsino	Sawyer
			Derwinski	Latta	Scheuer
			Devine	Leach, Iowa	Schroeder
			Dickinson	Leath, Tex.	Schulze
			Donnelly	Lederer	Seiberling
			Dornan	Lee	Sensenbrenner
			Dougherty	Lehman	Sharp
			Downey	Leland	Shelby
			Drinan	Lent	Shumway
			Duncan, Tenn.	Levitas	Simon
			Early	Lewis	Skelton
			Eckhardt	Livingston	Smith, Iowa
			Edgar	Lloyd	Smith, Nebr.
			Edwards, Calif.	Loeffler	Snowe
			Edwards, Okla.	Long, La.	Snyder
			Emery	Long, Md.	Solarz
			Erdahl	Lott	Solomon
			Ertel	Lowry	Spellman
			Evans, Del.	Lujan	Spence
			Evans, Ga.	Lungren	St Germain
			Evans, Ind.	McClory	Stack
			Fary	McCormack	Stangeland
			Fascell	McDade	Stark
			Fazio	McDonald	Stenholm
			Fenwick	McEwen	Stewart
			Ferraro	McHugh	Stokes
			Fish	McKay	Stratton
			Fisher	McKinney	Studds
			Fithian	Madigan	Stump
			Flippo	Markey	Swift
			Foley	Marks	Symms
			Ford, Tenn.	Marlenee	Synar
			Forsythe	Marriott	Tauke
			Fountain	Mathis	Tauzin
			Fowler	Matsui	Taylor
			Frenzel	Mattox	Thomas
			Frost	Mavroules	Thompson
			Fuqua	Mazzoli	Traxler
			Garcia	Mica	Trible
			Gaydos	Michel	Udall
			Gephardt	Mikulski	Van Deerlin
			Gibbons	Miller, Calif.	Vanik
			Gilman	Miller, Ohio	Vento
			Gingrich	Mineta	Volkmer
			Ginn	Minish	Walgren
			Glickman	Moffett	Walker
			Goldwater	Mollohan	Wampler
			Goodling	Montgomery	Watkins
			Gore	Moore	Weaver
			Gradison	Moorhead, Calif.	Weiss
			Gramm		White
			Grassley	Moorhead, Pa.	Whitley
			Green	Murphy, Ill.	Whittaker
			Grisham	Murphy, N.Y.	Whitten
			Guarini	Murphy, Pa.	Williams, Mont.
			Gudger	Murtha	Winn
			Guyer	Musto	Wirth
			Hagedorn	Myers, Ind.	Wolff
			Hall, Tex.	Natcher	Wolpe
			Hamilton	Neal	Wyatt
			Hammerschmidt	Nelson	Wydler
			Hance	Nolan	Wylie
			Hanley	Nowak	Yates
			Hansen	O'Brien	Yatron
			Harkin	Oakar	Young, Fla.
			Harris	Oberstar	Young, Mo.
			Harsha	Obey	Zablocki
			Hawkins	Ottinger	Zeferetti
			Heckler	Panetta	
				Pashayan	

NAYS—2

Danielson Kindness

ANSWERED "PRESENT"—1

Gonzales

NOT VOTING—72

Abdnor	Giaimo	Quayle
Albosta	Gray	Reuss
Alexander	Hall, Ohio	Roberts
Anderson, Ill.	Hillis	Rose
Biaggi	Holtzman	Rosenthal
Boggs	Horton	Roth
Boland	Jeffries	Satterfield
Broomfield	Jenrette	Sebelius
Brown, Ohio	LaFalce	Shannon
Chisholm	Leach, La.	Shuster
Clay	Luken	Staggers
Daschle	Lundine	Stanton
Davis, S.C.	McCloskey	Steed
Dicks	Maguire	Stockman
Dingell	Martin	Ullman
Dixon	Mitchell, Md.	Vander Jagt
Dodd	Mitchell, N.Y.	Waxman
Duncan, Oreg.	Moakley	Whitehurst
Edwards, Ala.	Mottl	Williams, Ohio
English	Myers, Pa.	Wilson, Bob
Erlenborn	Nedzi	Wilson, C. H.
Findley	Nichols	Wilson, Tex.
Florio	Perkins	Wright
Ford, Mich.	Pritchard	Young, Alaska

☐ 1920

The Clerk announced the following pairs:

Mr. Biaggi with Mr. Roth.
Mr. Wright with Mr. Edwards of Alabama.
Mr. Lundine with Mr. Findley.
Mr. Roberts with Mr. Bob Wilson.
Mr. Reuss with Mr. Stanton.
Mr. Nichols with Mr. Broomfield.
Mr. Florio with Mr. Hillis.
Mr. Alexander with Mr. Jeffries.
Mrs. Boggs with Mr. Mitchell of New York.
Mr. Boland with Mr. Quayle.
Mr. Dingell with Mr. Vander Jagt.
Mr. Charles H. Wilson of California with Mr. Schuster.
Mr. Mitchell of Maryland with Mr. Sebelius.
Mr. Moakley with Mr. Stockman.
Mr. LaFalce with Mr. Brown of Ohio.
Mr. Jenrette with Mr. Abdnor.
Mr. Gray with Mr. Horton.
Mr. Giaimo with Mr. Martin.
Mr. Ford of Michigan with Mr. McCloskey.
Mr. Nedzi with Mr. Pritchard.
Mr. Perkins with Mr. Williams of Ohio.
Mr. Rosenthal with Mr. Whitehurst.
Mr. Staggers with Mr. Erlenborn.
Mr. Ullman with Mr. Steed.
Mrs. Chisholm with Mr. Daschle.
Mr. Dicks with Mr. Duncan of Oregon.
Mr. Clay with Mr. Dodd.
Mr. Albosta with Mr. Hall of Ohio.
Mr. Davis of South Carolina with Mr. Luken.
Mr. Dixon with Mr. English.
Mr. Shannon with Mr. Leach of Louisiana.
Mr. Satterfield with Mr. Maguire.
Mr. Rose with Mr. Myers of Pennsylvania.
Mr. Waxman with Ms. Holtzman.
Mr. Mottl with Mr. Charles Wilson of Texas.

Mr. KRAMER changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1156) entitled "An act to amend and reauthorize the Solid Waste Disposal Act."

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF SENATE AMENDMENTS TO H.R. 8146, FEDERAL SUPPLEMENTAL UNEMPLOYMENT COMPENSATION

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1446) on the resolution (H. Res. 802) providing for consideration of Senate amendments to the bill (H.R. 8146) to provide a program of Federal supplemental unemployment compensation, which was referred to the House Calendar and ordered to be printed.

EXTENDING CERTAIN AUTHORIZATIONS IN CLEAN WATER ACT

Mr. BREAUX. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 2725) to extend certain authorizations in the Clean Water Act, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

Mr. CLAUSEN. Mr. Speaker, reserving the right to object, I do so so that the gentleman from Louisiana can at least give us a quick rundown on what is involved.

At this time I yield to the gentleman from New Hampshire (Mr. CLEVELAND).

(Mr. CLEVELAND asked and was given permission to revise and extend his remarks.)

Mr. CLEVELAND. Mr. Speaker, I rise in strong support of H.R. 6667 and urge its adoption by a wide enough margin to get the attention of the Senate now, after the elections, in the next Congress or whenever.

This bill contains a number of urgently needed authorizations for the clean water program, some of which I will touch on, plus some substantive amendments which make a great deal of sense to me.

One of the most important—and certainly the most controversial—provisions of H.R. 6667, as reported, is the repeal of the industrial cost recovery requirement originally enacted as part of the 1972 act. It was wrongheaded in concept then and it is wrongheaded today. I hope that the passage of time has made that clear beyond doubt, at least here in the House.

In one sense, industrial cost recovery reflects the myth that, by fine-tuning, we can craft national legislation that will provide perfect equity, perfect equality and perfect uniformity, and impose them on a stubbornly diverse country.

In another sense, it reflects the antibusiness sentiment here in Washington that has brought the economy of this country to the sad state it is in.

And in a final sense, it reflects the tunnel vision with which we too often act on legislation—in isolation, ignoring one programs as we enact another, or even one provision of a complex framework of legislation while we deal with another.

To be specific, during hearings this past summer before the Public Works Oversight Subcommittee, we documented the fact that another program under the Clean Water Act, pretreatment by certain industrial dischargers whose wastes are treated by municipal systems, is turning out to be totally unworkable.

It will be a disincentive for industries to go to joint treatment with municipalities, which was a basic objective of the act, and to pull out of joint treatment where they have that option. And ICR merely provides another incentive to do just that. The Congress would do well to deal with the pretreatment problem in the next Congress, along with a number of other toxic issues. But for the moment, let us finally put a tin lid on ICR.

While I am on the subject, I want to make it abundantly clear that it is the intent of this repealer that any funds which have been collected from industry while ICR has been in effect be returned to the companies that have coughed up the charges.

Of the authorizations extended by this bill, I want to emphasize the importance of the $100 million for the section 106 grants to State and interstate agencies for administration. The clean water program has imposed an incredible workload on the States in the way of requirements to be met, and the job just cannot be done without appropriate assistance.

As some Members may be aware, some additional funding is made available to the States under section 205(g) of the act, the so-called Celveland-Wright provision. But this is absolutely no substitute for 106 funding. Section 205(g) funds are expressly for the purpose of enabling States to create and maintain staffs to carry out the management of the construction grants program under authority delegated by the Environmental Protection Agency.

In that connection, I proposed an amendment to resolve a problem that has arisen involving the funding of State delegation of the construction grant program. At the time the provision originally was enacted, appropriations were at or near authorized levels, so the 2-percent set-aside of construction grant funds made available for this purpose was based on authorized amounts.

The sharp decline in appropriations in recent years has had the result of shrinking the amounts of 205(g) funds available, causing some States to lay off personnel already on board or freeze staff levels. Other States working toward delegation agreements arrangements with EPA have been forced to take a second look.

My amendment, therefore, ties the 2-percent set-aside to authorized rather than appropriated amounts, thereby restoring some much needed stability to this vital program. It has already passed the House as part of another piece of legislation and I thank the committee for accepting the amendment without dispute as part of the committee package.

Another provision in this bill is ap-

vision of my amendment to allow municipalities to construct wastewater treatment facilities at their own expense and then receive reimbursement from allotments made available in future years. Actually, this is the intent of existing law. But the provision as it now stands is unworkable, and my language of the amendment simply removes that obstacle.

Such a provision is absolutely essential to permit the States which are in a position to move projects to construction rapidly, help achieve the clean-up goals of the act and get a jump on inflation into the bargain.

This should be considered a supplement, not an alternative, to the two-tier authorization mechanism which I authored in this Congress and which passed the House last December, only to be stonewalled in the Senate.

I have, with great reluctance, decided not to offer that provision again as part of this bill, only in the interests of avoiding a deadlock that would jeopardize chances for getting H.R. 6667 approved and sent on to the President. I leave to those who return next year the task of taking the Senate upon its commitment to consider two-tier and the problem of fast-moving States in the next Congress.

A final provision, of which I must confess to authorship, is the language extending the municipal deadline for construction of municipal treatment works until 1985. There is no hope that that deadline can be met, so we may as well be realistic about it and extend the deadline.

Personally, I would have preferred to move it to 1988, but 1985 was all the traffic would bear. However, due to Senate opposition and the need to compromise, this provision has been unceremoniously dropped. I also leave it to those who return in January to solve this problem. This is more than a problem of feasibility, credibility or realism, though those are important considerations and alone more than justify the extension. There are far more grave implications for the program if we leave unrealistic deadlines in place. This gives EPA the opportunity to pick and choose, and play the game of who gets sued, getting the courts into the act and skewing priorities within the States. Such would be contrary to the House position, or at least that of the House Public Works Committee, which has steadfastly held to realistic deadlines adequate funding, and project priority lists under State control.

Mr. Speaker, this is my last water pollution bill as I leave this body after 18 years. In one sense I might have preferred it to be a big barn burner of a bill, but in another sense I do not. It is typical of the kind of job we must do in this Congress, and in each succeeding Congress; to grasp the realities of this program and, bit by bit, piece by piece, try to enact the improvements in a program of vital importance that will never be perfect.

Mr. CLAUSEN. Mr. Speaker, further reserving the right to object, I have two unanimous-consent requests.

I ask unanimous consent that I be permitted to include in the RECORD the statement of the gentlewoman from Massachusetts (Mrs. HECKLER) in strong support of the amendment in the nature of a substitute.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

(Mr. CLAUSEN asked and was given permission to revise and extend his remarks.)

Mr. HARSHA. Mr. Speaker, will the gentleman yield?

Mr. CLAUSEN. I yield to the gentleman from Ohio.

(Mr. HARSHA asked and was given permission to revise and extend his remarks.)

Mr. HARSHA. Mr. Speaker, I rise in strong support of the legislation the gentleman from Louisiana is endeavoring to present to the House.

Mr. Speaker, this legislation has been unanimously approved by the U.S. Senate on a record vote of 93 to 0. A companion House measure, H.R. 6667, was reported unanimously by the Committee on Public Works and Transportation. The committee amendment reflects a compromise which has been worked out by the other body so that we can avoid a conference on the differences in the two bills. While all amendments are vitally important, I would like to emphasize three of the amendments.

First, the committee amendment extends the reallotment deadline for obligation of construction grant funds for 12 months. This extension is vitally important to my State in that they face a loss which may reach $120 million if the amendment is not approved. Last year Ohio lost $33 million to reallotment—the only State to do so. This year other States face the same problem and in spite of EPA's heroic effort to obligate these funds before September 30, some funds will be lost unless this amendment is approved. With the amendment we can build the projects necessary to achieve clean water and keep Ohioans employed in this effort.

Second, Mr. Speaker, this legislation abolishes the industrial cost recovery requirements of the Federal Water Pollution Control Act. The other Members have discussed this provision and I will not duplicate their statements. Suffice it to say the House position in 1972, which questioned the need for ICR, has been vindicated by 8 years of experience. Unfortunately it took an extraordinary long time to reach this conclusion. Hopefully, this will not be repeated when we analyze the impact of the Stafford amendment which abolishes the eligibility for Federal assistance for the industrial capacity of waste water treatment facilities, subject to certain conditions.

Finally, Mr. Speaker, section 12 authorizes a demonstration program to be undertaken by the Administrator of the EPA to make grants to States to clean up abandoned mines and then use these facilities for disposal of hazardous waste. The amendment also specifically requires that demonstration projects be undertaken in the States of Ohio, Illinois, and West Virginia. As the author of this provision, I must state that it is intended that when a project is undertaken in each of these States, no other State shall receive a grant under this authority.

Additionally, I intend that EPA will make a grant to the State for the cleanup effort and that the State will contract with a private operator, to the maximum extent practicable, for the implementation of this program—including the management of the hazardous waste facility. By this I mean that the State could accept the money from the EPA and in effect act in a ministerial fashion and contract out the cleanup work and the day-to-day operation of the hazardous waste facility. It is intended that the hazardous waste facility will receive all appropriate approval under the Resource Conservation Recovery Act, and its regulations concerning hazardous waste facilities. Programs authorized by this amendment will provide funds to reclaim and restore the site after disposal operations cease. It is contemplated that this effort will include contouring, seeding, and other appropriate practices to return the site to as natural condition as possible so that such uses as recreation or timbering could be carried out. This might require the establishment of a bank account at the beginning of this program so that when the facility's useful life is reached, funds will be available for the final restoration effort.

Further, the amendment requires Federal-State cost sharing on a 90–10 basis. The States share of the project cost could include the acquisition costs associated with securing title; that is, lands easements, or rights-of-way, to the mine site. This is consistent with the cost sharing of the water resources development program.

Mr. Speaker, I believe that the compromise worked out today represents the best deal possible in the remaining hours of this session before we adjourn for the elections. I therefore urge my colleagues to adopt this amendment and approve the legislation.

Mr. CLAUSEN. Mr. Speaker, under my reservation of objection I yield to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I would say to the gentleman under his reservation of objection in the matter of explaining to the House what this bill does, the Senate passed this legislation by a vote of 93 to 0 back in July. The Public Works Committee in the House passed this bill in committee by unanimous vote, and has simply not been able to schedule this legislation, which is the reason why we are attempting to try to bring it to the attention of the House tonight, in order that the Senate might act on the legislation this evening.

We have met with the Senate, and they agree with what we bring before the House tonight, and would act on it.

The bill, as has been indicated already, simply extends authorization for appropriations through fiscal year 1982 for a number of programs that are administered by the Environmental Pro-